IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7660 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULHAMID MOHMADMIYA MALEK

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION & ORS.

Appearance:

1. Special Civil Application No. 7660 of 1989

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioner
MR PRANAV G DESAI for Respondents Nos. 1-2
Respondent No. 3 SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 24/09/2004

ORAL JUDGEMENT

This petition was heard on 20th September, 2004. After the matter was fully argued, both the learned advocates were called upon to furnish certain further information. At the request of the learned advocates, the matter was allowed to stand over to 24th September, 2004 i.e. today. Today, both the learned advocates Mr.Upadhyay and Mr.Rathod have filed sick note. First; the sick note need not be entertained in a part-heard matter. Second; the required information has been furnished by the learned advocate Mr.Desai. Hence, the matter is taken-up for judgment.

The petitioner, a Driver in the respondent Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"), challenges the order dated 1st November, 1985 made by the disciplinary authority. By impugned order the petitioner was ordered to be dismissed from service. Feeling aggrieved, the petitioner had instituted Regular Civil Suit No.628/1985. By order dated 19th November, 1986 made by the learned Joint Civil Judge (S.D.), Nadiad below application Ex.5, interim injunction pending the suit was refused. The said order came to be confirmed in Civil Misc. Appeal No.249/1986 by the learned Assistant Judge, Nadiad. Feeling aggrieved, the petitioner has preferred the present petition.

It was alleged that on 17th April, 1985 the petitioner was on duty on Nadiad-Sardoi route. When he reached Kathlal Bus Station a young girl of 9 years of age was hit by the bus that was driven by the petitioner. The girl fell down and was crushed under the front left wheel of the bus. The bus came to halt some 36 feet from the place of the accident. It was alleged that the petitioner was driving the bus recklessly and at excessive speed. The accident occurred on account of the negligence of the petitioner. After holding due departmental enquiry the guilt of the petitioner was held to be proved. For the said act of gross negligence he was dismissed from service by impugned order dated 1st November, 1985.

Mr.Upadhyay had relied upon the judgment of the learned Judicial Magistrate, First Class in Criminal Case No.1846/1985. He had submitted that pursuant to the accident in question the petitioner was prosecuted for offence punishable under Sections 249 and 304(A) IPC and Sections 112 and 116 of the Motor Vehicles Act, 1988. In the said criminal case the petitioner was acquitted by the judgment and order dated 31st December, 1986 passed by the Joint Judicial Magistrate, First Class, Kapadwanj.

He has also relied upon the report of the accident in question made by the officer of the Corporation. It appears that immediately after the accident the place of accident was inspected by the officer of the Corporation to assess the damage. In the report submitted by him, it was stated that the damage caused to the vehicle was to the extent of Rs.600=00. He had also recorded that the driver was partially responsible for the accident. Mr.Upadhyay has submitted that the petitioner has wrongly been held to be negligent. The order dismissing the petitioner from service was unwarranted and uncalled for.

Considering the nature of accident, I am of the view that the Corporation was right in holding that the petitioner was negligent in driving which resulted into loss of life and monetary loss to the Corporation. The order of dismissing the petitioner from service was just and proper.

The disciplinary authority has discussed the manner in which the accident occurred in detail. Considering the place and time of the accident and the manner in which it occurred, the finding of guilt recorded by the Corporation does not warrant interference. The observation made by the reporter, relied upon by Mr.Upadhyay, was the prima facie opinion of the reporter. The said opinion cannot bind the disciplinary authority. The disciplinary authority was required to record its own finding on the basis of the evidence on record, which it did do. It should also be noted that the petitioner came to be acquitted in the criminal case as the prosecution failed to establish that the petitioner was the driver of the offending bus. The Criminal Court has not recorded finding of absence of negligence of the driver of the offending bus. In any view of the matter, as held by the Hon'ble Supreme Court in the matter of Allahabad District Cooperative Bank Ltd., Allahabad v/s. Vidhya Varidh Mishra [(2004)6 SCC 482], the petitioner's acquittal by the Criminal Court shall not vitiate the disciplinary proceeding or the consequent punishment imposed upon the petitioner. I am, therefore, of the opinion that the impugned order dismissing the petitioner from service does not warrant interference.

Today, learned advocate Mr.Desai has submitted that in Motor Accident Claim Petition No.130/1986 in respect of the aforesaid accident the driver of the Corporation (i.e. the petitioner) was held to be negligent. The Corporation was directed to pay compensation in the sum of Rs.26,000=00 (Rupees Twenty

Six Thousand). He has further stated that in view of the ad-interim orders made in Civil Suit and in Misc. Appeal and the interim order made on this petition, the impugned order was not implemented. The petitioner continued in service till he reached the age of superannuation and retired from service on 31st July, 1996. On his retirement the petitioner has been paid all retiral benefits. As the petitioner has retired from service and has been paid all retiral dues, no further order is required to be made on this petition. Petition is accordingly disposed of. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

/sakkaf